

SERVICE DATE - JUNE 6, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-105

DHX, INC.

v.

MATSON NAVIGATION COMPANY AND SEA-LAND SERVICE, INC.

Decided: June 5, 2002

DHX, Inc. (DHX), a freight forwarder, has filed a complaint challenging the reasonableness of certain rates and practices of two water carriers in the noncontiguous domestic trade, Matson Navigation Company (Matson) and Sea-Land Service, Inc., now SL Service, Inc. (SL) (defendants). On December 21, 2001, the Board served a decision in this proceeding denying motions to dismiss the complaint and directing the parties to consult with each other and jointly recommend a procedural schedule. In a decision served on March 28, 2002, a procedural schedule was adopted. Under the schedule, the discovery period ends on June 19, 2002, the opening statement is due on July 19, 2002, reply statements are due on August 19, 2002, and the rebuttal statement is due on September 9, 2002.

By a motion filed on May 17, 2002, DHX seeks issuance of a protective order extending the time deadlines for responding to discovery requests served by defendants. DHX alleges that the requests are unrealistic in their time requirements and burdensome in their application and place of production. In its reply filed on May 24, 2002, SL states that it does not oppose a reasonable extension of time for DHX to produce documents or otherwise provide answers to interrogatories. However, it argues that, under the circumstances here, it would be inappropriate to grant an extension under the Board's protective order procedures. Instead, SL suggests that the Board require the parties to confer and submit a proposed discovery schedule for review, or alternatively, SL requests that the Board stay all discovery pending the resolution of the motion SL filed on May 23, 2002, seeking dismissal of two counts of the amended complaint. SL argues that a grant of the motion to dismiss, in whole or in part, would serve to narrow to some extent the issues currently being pursued by DHX and would thus be relevant to further discovery activity. SL also requests that any modification of the existing discovery schedule should preclude the parties from generating new discovery requests.¹

¹ In a letter filed on May 29, 2002, DHX objects to the Board's acting on SL's request to stay discovery at this time. Instead, DHX argues that the Board can consider SL's stay request when it acts on the motion to dismiss.

Given that a decision on the motion to dismiss may affect the scope of discovery,² it is reasonable to suspend the procedural schedule at this time to allow the Board to consider the motion to dismiss, and any reply that DHX may wish to file, and rule on the matter before the parties are required to file their statements. Although suspension of the procedural schedule suspends the discovery schedule as well, the parties are free to complete outstanding discovery requests if they voluntarily agree to do so.

It is ordered:

1. The procedural schedule is suspended pending further order of the Board.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

² In addition to the motion to dismiss filed by SL, DHX filed a motion on May 21, 2002, seeking an order directing Matson to submit more definite responses to more than 50 of the answers it filed to the amended complaint. Matson filed its reply on May 29, 2002. Also, on June 3, 2002, DHX filed both a motion for an order compelling SL to answer certain interrogatories and produce documents, and a motion for waiver of the rule at 49 CFR 1114.31(a), which specifies that a motion to compel should be filed within 10 days after expiration of the period allowed for submission of answers to interrogatories.